

IN THE MATTER OF IMPASSE ARBITRATION

DUBUQUE COUNTY
Public Employer

and

DUBUQUE COUNTY DEPUTY
SHERIFFS' ASSOCIATION
Employee Organization

ARBITRATION AWARD

Terry D Loeschen
Arbitrator

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RELATIONS BOARD

APPEARANCES

FOR THE DUBUQUE COUNTY DEPUTY SHERIFFS' ASSOCIATION

Mr Stephen J Juergens, Attorney
Mr Ron Neumann, Association President

FOR THE COUNTY OF DUBUQUE

Ms Mary Ann Specht, Personnel Director
Mr Ken Purdy, Sheriff of Dubuque County

AUTHORITY

This proceeding arises pursuant to the provisions of Sections 19 and 22 of the Iowa Public Employment Relations Act, Chapter 20, Code of Iowa (hereafter the Act), Dubuque County (hereafter County or Employer) and the Dubuque County Deputy Sheriffs' Association (hereafter Association) have not been able to agree upon the terms and conditions of a collective bargaining agreement for fiscal year 2008-2009 through negotiations and mediation. The parties proceeded to Fact-finding, and a fact-finding hearing was held on May 9, 2008. Fact-finder Thomas L. Yaeger issued a Fact-finders Report and Recommendations on May 23, 2008. Both sides rejected the Fact-finder's report. The parties were then required to proceed to impasse arbitration. The procedures for statutory impasse arbitration are set forth in Section 22 of the Act.

The undersigned Arbitrator was selected by the parties from a list supplied by the Iowa Public Employment Relations Board. An arbitration hearing was held July 9, 2008.

at the Law Enforcement Center in Dubuque, Iowa. The hearing commenced at 8:00 a.m. and concluded at approximately 11:00 a.m. During the hearing both parties were provided a full and equal opportunity to present evidence and argument in support of their respective impasse positions. Both sides were offered an equal opportunity for cross examination if desired. The hearing was tape recorded by the Arbitrator in accordance with the rules of the Iowa Public Employment Relations Board. Both sides were represented by skilled advocates and the undersigned Arbitrator appreciates the professional manner in which the case was presented.

At the conclusion of the presentation of all evidence and argument offered in support of or opposition to each party's impasse positions, the record was closed and the arbitration deemed under submission. Based upon a thorough review of all evidence presented at the hearing, including all exhibits, and careful consideration of the arguments presented by both sides, this impasse arbitration award is issued consistent with the applicable statutory criteria set out in Section 20.22(9) of the Act. Further, this arbitration award is issued within the time lines required by law.

BACKGROUND

Dubuque County is located in Northeast Iowa, adjacent to the Mississippi River. Dubuque County has a geographical area of approximately 608 square miles. It has an estimated population of 92,384, making it the 7th largest county in the state. There are 21 cities within its boundaries with the City of Dubuque being the largest. Of those 21 cities only Dubuque and Dyersville have full time law enforcement within the City. Of the remaining communities five have part-time law enforcement and the others depend upon the County for their public safety needs.

The County employs 362 full-time persons, 93 part-time persons and 18 seasonal employees. In addition to the Deputy Sheriff bargaining unit, there are five other bargaining units in the County. Those other units include Sunnycrest Manor (nursing home), Courthouse/Library clerical, Secondary Road Department, Sheriffs' Department Management Unit and the Assistant Attorney Unit.

The County has a 3.6% population growth since 2000, ranking 5th out of the eleven largest counties for growth during this time period. The County has enjoyed a significant increase in business development and new home building over the past eight years.

The County and the Association have a long history of collective bargaining. They are currently in the third year of a 3 year collective bargaining agreement. That agreement with its term of July 1, 2006, through June 30, 2009 provides for a reopener to bargain wages and insurance for the third year, July 1, 2008 through June 30, 2009. The parties both acknowledge that any arbitration award is limited to that one year time period.

On September 19, 2007, the Association gave notice to the County of its intent to bargain wages and insurance under the reopener for fiscal year 2009. The Association presented its reopener negotiation proposals to the County on October 18, 2007. It proposed a 6% wage increase and the elimination of health insurance co-payments for office, emergency and hospital visits. On November 19, 2007, the County responded with its negotiation proposals consisting of a wage freeze and employee cost sharing of 10% of the monthly premium cost on the employees selected health insurance plan. The parties engaged in contract negotiations on December 5, 2007 and January 9, 2008. On January 14, the parties signed an independent impasse agreement wherein they mutually agreed to waive the March 15, 2008 deadline for the completion of the collective bargaining process. Mediation occurred February 28, 2008, but the parties were unable to reach a voluntary settlement. They met again for negotiations on April 18, 2008 and still were not able to obtain a settlement.

The parties participated in a fact-finding hearing before Fact-finder Thomas L. Yaeger on May 9, 2008. His Fact-finding Report and Recommendation was issued May 23, 2008. Both sides rejected the Fact-finding Report. Following that rejection, the impasse has proceeded to final and binding arbitration.

Again, it should be noted that the independent impasse agreement between the parties states as follows: "It has been agreed between the Dubuque County Deputy Sheriffs' Association and Dubuque County to waive the March 15, 2008 deadline for the completion of the collective bargaining process."

IMPASSE ITEMS

1 INSURANCE

ASSOCIATION FINAL ARBITRATION OFFER

Maintain current contract premium cost to employees of 0% (no cost sharing)

COUNTY FINAL ARBITRATION OFFER

2% employee cost sharing of monthly health insurance premiums through pre-tax payroll deductions

FACT-FINDER RECOMMENDATION

“Employees would be required to pay 2% of the monthly premiums for health and dental insurance under the three plans offered by the County effective January 1, 2009, to be deducted through pre-tax payroll deduction As a quid pro quo fee for this change in health and dental insurance benefit, the employer will grant bargaining unit employees a ½ of 1% across the board wage increase effective January 1, 2010 ”

2 WAGES

ASSOCIATION FINAL ARBITRATION OFFER

6% increase in wages

COUNTY FINAL ARBITRATION OFFER

3 5% increase in wages

FACT-FINDER RECOMMENDATION

“A 6% across the board wage increase in this bargaining unit for fiscal year 2009 ”

ARBITRATION CRITERIA

Section 20 22(9) of the Act sets forth the criteria by which an arbitrator is to select, under subsection 11, “the most reasonable offer “on each impasse item submitted by the parties Section 20 22(9) specifically provides as follows

The arbitrator or panel shall consider, in addition to other relevant factors, the following factors

- a Past collective bargaining contracts between the parties, including the bargaining that lead up to such contracts
- b Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and classification involved
- c The interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of such adjustments on the normal standard of services
- d The power of the public employer to levy taxes and appropriate funds for the conduct of its operations

Moreover Section 17 6 of the Act provides

No collective bargaining agreement or arbitrator’s decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer’s funds, spending or budget, or would substantially impair or limit the performance of any statutory duty by the public employer

Further, PERB Rule 621-7 5(6) states “The arbitration hearing shall be limited to those factors listed in Iowa Code Section 20 22 and such other relevant factors as may enable the arbitrator or arbitration panel to select the fact-finder’s recommendation (if fact finding has taken place) or the final offer of either party for each impasse item ”

This award is made with due regard for the above statutory criteria However, because the County specifically stated it did not claim an inability to fund any of the proposals or recommendations involved in this impasse, ability to pay was not a factor in the final award set out below

The authority of the Arbitrator is also subject to the standard set forth in Maquoketa Valley Community School District v Maquoketa Valley Education Association, 279 N W 2d 510,513 (Iowa 1979) which requires an arbitration panel or single arbitrator to select final offers or the fact-finding recommendation on each impasse item “in toto” (with the terms “impasse item” being defined as a Section 20 9 subject of bargaining)

It is the duty of the Arbitrator to arrive at a decision based upon the factors listed in Section 20 22(9) of the Act and such other relevant factors as may enable the Arbitrator to select the final offer of one party or the other. The statutory duty of the Arbitrator is to select the most reasonable offer on an impasse item. Section 20 22 (11) of the Act states “A majority of the panel of arbitrators (in the present case a single arbitrator) shall select within fifteen days after its first meeting, the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties, or the recommendations of the fact-finder on each impasse item. (Emphasis added)

Thus, with respect to insurance, the undersigned Arbitrator is to select the Association offer (no change in current contract), the County offer (2% monthly premium cost share) or the Fact-finder recommendation (2% monthly premium cost share/quid pro quo 5% wage increase, January 1, 2010). With respect to wages, the choices are Association 6%, County 3 5% and Fact-finder 6%.

As is stated above, except for consideration of ability to pay for a proposed impasse position, this award must be made with due consideration given to the statutory criteria.

COMPARABILITY

The parties have no dispute concerning an appropriate comparability group. Historically they have used the ten other largest Iowa counties to compare wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work. Those ten counties by rank order in population size are Polk—408,888, Linn—201,853, Scott—162,621, Black Hawk—126,106, Johnson—118,038, Woodbury—102,972, (Dubuque—92,384),

Pottawattamie—90,218, Story—80,145, Dallas—54,525, and Clinton—49,782. Dubuque County occupies 7th place in population size.

The present Arbitrator agrees with the commentary of Fact-finder Thomas L. Yaeger that there are factors other than total population that may make a particular county more or less comparable. However, the parties have long used and agreed upon the above counties as their appropriate comparability group. Therefore, this award is issued using the above counties for comparability purposes.

FINDINGS AND CONCLUSIONS

1 Insurance

The arbitration offer of the County calls for a 2% monthly premium cost sharing by the bargaining unit. The Association offer is that of no change in current contract which does not require any sharing of premium costs. The Fact-finder's Report recommends a 2% cost share for employees on health and dental premiums, but includes a quid pro quo of a ½ of 1% across the board wage increase effective January 1, 2010. The authority of the Fact-finder to impose a quid pro quo beyond the contract term is unclear. There is no evidence in the record that the Fact-finder was asked to make recommendations for a multi-year contract. The evidence is that the parties are in the second year of a three year contract which has a remaining term which expires June 30, 2009. In the absence of a stipulation of the parties, authority of the Fact-finder to make recommendations beyond the life of the contract is suspect at best. One can not say with certainty that an award of a fact-finder position beyond the term of the contract will be enforceable. For this reason alone, if no other, the Fact-finder Recommendation should be rejected. This leaves two opposing positions, employee 2% cost sharing of monthly premiums for health and dental insurance and no premium cost sharing, i.e. no changes in the current contract.

The County offers three separate insurance plans to employees through open enrollment each year. Those plans include ISAC, Blue Cross/Blue Shield, and Medical Associates (HMO). The HMO's have no deductibles. The Blue Cross/Blue Shield plan is the "Select 8" option which is an 80/20 plan with a \$500.00 single deductible and a

\$1,000 00 family plan deductible Both parties agree that the various County options for coverage represent the best plans available

There is no dispute that the County will incur a 4 49% increase in premium cost next year Under the current labor agreement the County provides 100% fully funded single and family health and dental benefits to full time employees with no cost share on the part of those employees The County has paid the entire cost of health insurance premiums since the mid-1980's The Association contends that in past years it has accepted lower wage increases to keep the insurance status quo of fully paid premiums The Association wants to maintain that status quo The Association also claims that a percentage contribution is too radical a change and the kind of contribution which puts employees at risk automatically increasing cost shares in future years

The County contends and the evidence shows that in the selected comparability group, only two Counties (Clinton and Dubuque) do not have any employee cost sharing of health/dental insurance premium costs All other counties have some form of cost sharing However, the Association responds that only one county (Polk) has a percentage cost share Given the bargaining history of these parties, and no premium cost share since the mid-1980's, the Association argues that a percentage contribution is too drastic a change The undersigned Arbitrator agrees with this assertion A 4 49% increase in premium cost is not a drastic increase, but a percentage cost contribution is a drastic change after 20 plus years of fully paid premiums

Many Arbitrators in Iowa have expressed the view in interest arbitration cases, with impasse items which exclusively address contract language or which represent a radical change in long standing contractual arrangements, that as a general premise, the changes sought are better made by the parties themselves during the "give and take" of the collective bargaining process An often stated rationale for this premise is because in collective bargaining negotiations there are frequently both give and take compromises in other contract areas to which the arbitrator is not privy This is the so-called "quid pro quo" which is not apparent in the present case The County claims ½% of its 3 5% wage offer is a quid pro quo for insurance cost sharing No evidence in the record supports that claim other than a statement of the county's advocate The Fact-finder recommended quid pro quo of a like amount is questionable due to its stated effective date

In any event, disputes of the above described nature are better resolved by the parties themselves as they should be better able to identify, one to another, the perceived problems resulting from the contract change in question

Most arbitrators therefore place a heavy burden upon the moving party in such circumstances to show there is a significant need for the change, that the status quo is highly burdensome to the party requesting the change, or that despite these concerns the other party has refused to recognize the problems

The County claims that spouses who have health insurance available elsewhere opt for County coverage because of the 100% premium payment. This results in an unfair burden on County taxpayers. It contends that family members of County employees are likely to migrate to County plans where there is no employee premium cost. No extrinsic evidence was presented to show that this has or will occur.

The County claims that if employees have a financial stake in premium costs, they will have greater incentive to help control costs. While a logical argument on the surface, again, there is no evidence in the record to substantiate this contention.

The County relies on internal comparability and places a great deal of emphasis on the voluntary settlement obtained with the Sunnycrest Manor (County care center) bargaining unit. It stresses the fact that the unit agreed to a three year collective bargaining agreement with health insurance premium costs shared at 2% starting January 1, 2009, 3% on July 1, 2009 and 4% on July 1, 2010. While internal comparability is a factor which may be considered, and may be in some cases persuasive, in the present case the Arbitrator differs from the Fact-finder's conclusions. There are six bargaining units within the County including the Deputy Sheriffs' Unit. Sunnycrest Manor was the only unit to voluntarily accept a percentage cost share. Further, even though the comparison is internal, the statutory criterion refers to public employees doing comparable work. The undersigned Arbitrator is unwilling to conclude that a care center facility is similar to the law enforcement duties imposed upon persons in a Sheriffs' Department. There are numerous unit determination decisions by the Iowa Public Employment Relations Board where it has refused consolidation of a law enforcement unit with other units of the same employer due to dissimilarity of interest. The undersigned Arbitrator does not find the County's internal comparison persuasive.

While a significant number of counties in the external comparability group have premium costs shared with employees, comparability is lacking with respect to sharing premium costs on a percentage basis. Percentage sharing is often antagonistic to labor because of the potential for automatic future escalation of the employee share each time there is a premium increase with limited ability to bargain a cap or lid. Fixed dollar cost sharing is more palatable to most negotiators.

It is regrettable that the parties did not pursue the labor-management committee device to look at insurance savings options. The evidence shows that committee worked well in the past. There was no evidence regarding other options such as adding deductibles or co-pays, reduction or consolidation of one plan, a fixed dollar share rather than a percent, cost sharing on family premiums only, etc. Moreover, when faced with a long history of collective bargaining contracts providing fully paid premiums, the County did not offer a significant quid pro quo for the requested change.

In short, a 4.49% increase in insurance premium cost is relatively modest and does not demand immediate change to a percentage cost sharing. Comparability is lacking with respect to percentage sharing. No evidence was presented by the County to demonstrate a significant need for the change or that the status quo, with the increase in premium costs, is highly burdensome. Where there is contract language of long duration requiring Employer payment of health insurance premiums, a substantial quid pro quo should be offered to effectuate immediate change. This did not occur.

Based upon the foregoing, the Arbitrator finds and concludes that the final arbitration offer of the Association is the most reasonable, and there should be no change in the current labor contract with no employee participation in the premium cost of health and dental insurance.

2 WAGES

The County's final arbitration offer is a 3.5% wage increase. The Association's final arbitration offer is a 6% increase. The recommendation of Fact-finder Thomas L. Yaeger is a 6% increase. Thus, in reality, there are only two choices: 3.5% versus 6%.

Those two choices present the dilemma of selecting the most reasonable position. The Arbitrator does not have authority to "split the difference," but must award one or the

other. The award must be consistent with the statutory criteria set out in 20 22(9) of the Act. This requires a review of past collective bargaining agreements of the parties and the bargaining that led to such contracts and a comparison of wages of the present bargaining unit with those of other public employees doing comparable work, while giving consideration to factors peculiar to the area and classification involved. One should bear in mind that the classification involved is that of law enforcement, not county care facility employees. This is one reason why the internal comparison urged by the County is less persuasive. As was stated with respect to the insurance issue, while internal comparability may be an important consideration, it becomes less viable the more dissimilar the duties and other conditions of employment are between the units being compared. The statutory criterion speaks to a comparison of other public employees doing comparable work. Thus a comparison to other law enforcement departments in the parties established comparability group is a more viable methodology in the present impasse determination.

The remaining statutory criteria regarding the ability to finance the proposed economic adjustments, effect on the normal standard of service and the power to levy taxes and appropriate funds have little impact in the present case because the County has admitted that it does not assert a lack of ability to pay the cost of the impasse proposals presently under consideration.

The County contends that its 3.5% wage increase is supported by the 3.5% voluntary settlement at Sunnycrest Manor. In addition it points out that the Board of Supervisors certified the fiscal 2009 budget concurring with the Dubuque County Compensation Board's salary recommendations for elected officials, their deputies and other management at 3%. It admits that historically, internal comparisons of overall wage increases for the Dubuque County Deputy Sheriffs' Association bargaining unit have been well above the other units. (See Arbitration Final Statement of the County, July 9, 2008, at unnumbered page 5)

The County claims that in the Consumer Price Index for All Urban Consumers, the U.S. City Average is 2.4% for 2007. In addition, the Social Security Administration 2007 Cost of Living Adjustment was set at 2.3%. The historical averages for the CPI and Cost of Living Adjustment from 2002 to present are 2.65% and 2.66% respectively, while

the average wage increase from 2002 to 2007 is 4.16%. Thus it argues that the Unit's historical wage increases on average have exceeded the CPI and COLA. Therefore its 3.5% impasse position is most reasonable.

The Association's evidence shows that the deputy starting wage ranks 9th, or second from the bottom in the 11 county comparability group. The deputy top wage ranks 10th. The starting wage and top wage are near the bottom although Dubuque County is the 7th largest county in the group. In addition, the Association calculates the average wage for the Unit ranks 10th in the comparability group. The County responds that the Association's use of 2080 hours to calculate an average wage is inaccurate because 59 of 60 deputies are at 2224 hours. These additional hours must be taken into consideration in order to have an accurate calculation which could result in a different rank order.

The Association claims that from May 2007 to May 2008 the consumer price index has increased to 4.2% and the Social Security cost of living adjustment may be calculated at 4.43%. The County 3.5% offer is obviously below either index. The Association further contends in its Exhibit 23 that a 6% increase places Dubuque at the average of the top eleven counties in a total wage comparison. However, it also points out that 6% only moves the top and starting wage rates to 8th place in rank order. The Association argues that it would take a 9% increase for the Dubuque bargaining unit to rank 7th in the comparability group consistent with its 7th place rank in population. Therefore its 6% impasse offer is reasonable.

A comparison to known settlements in the established comparability group shows that 3.5% may be a bit low while 6% is slightly high. This comparison provides limited assistance in a final determination. Historically, the present unit has received more favorable increases than other county units. This has some significance in arriving at a determination. The Fact-finder in his analysis reached the conclusion that the County has been granting larger wage increases to the present unit in order to bring employees closer to a 7th rank position in the comparability County group, at least with respect to starting and top deputy wages, if not other classifications. The undersigned Arbitrator agrees with Fact-finder Mr. Thomas L. Yaeger. His discussion need not be set out in detail in this award. The Arbitrator finds and concludes that the Fact-finder's wage

recommendation is the most reasonable and most consistent with the applicable statutory criteria. The Fact-finder did give due consideration to factors peculiar to the area and the classification involved. The evidence supports a conclusion that historically the parties have attempted to obtain a 7th place rank order in wages consistent with the County's size rank in its comparability group.

Those past collective bargaining contracts are relevant factors which support a 6% increase in wages. As between the two choices presented, the Fact-finder's recommendation is the most reasonable, particularly where there is no issue of ability to pay presented.

Based upon the above analysis and after a thorough review of all taped evidence, written exhibits and statements of the parties, the Arbitrator issues the award set forth below.

ARBITRATION AWARD

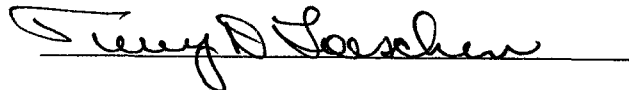
1 Insurance

I hereby award the final arbitration offer of the Association: no change in current contract and no cost participation in health/dental insurance premiums.

2 Wages

I hereby award the recommendation of the Fact-finder: a 6% across the board wage increase for the bargaining unit. This award is effective nunc pro tunc (then for now) as of July 1, 2008.

June 21, 2008



Terry D. Loeschen, Arbitrator
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Daleville, VA 24083
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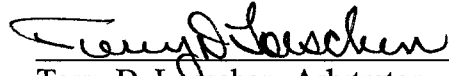
CERTIFICATE OF SERVICE

I certify that on the 21st day of June, 2008, I served the foregoing Award of Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below

Ms Mary Ann Specht
County of Dubuque
720 Central Avenue
Dubuque, Iowa 52001

Mr Stephen J Juergens, Attorney
151 West 8th Street
200 Security Building
Dubuque, Iowa 52001-6832

I further certify that on the 21st day of June, 2008, I will submit this Report for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319


Terry D Loeschen, Arbitrator